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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

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TRAVIS SMITH,

Plaintiff and Appellant,

v.

THE SUPERIOR COURT OF EL DORADO COUNTY  
et al.,

Defendants and Respondents.

C062229

(Super. Ct. No.  
PC20090119)

Travis Smith, in propria persona, appeals from the judgment dismissing his complaint after the trial court sustained a demurrer without leave to amend.

We find no error and affirm the judgment of dismissal.

#### BACKGROUND

Because this case comes to us after the sustaining of a demurrer without leave to amend, we accept all material facts properly pleaded as true, including matters of which judicial notice may properly be taken, but not conclusions of fact or law, in determining whether the trial court abused its discretion in sustaining the demurrer without leave to amend.

*(Aubry v. Tri-City Hospital Dist. (1992) 2 Cal.4th 962, 966-967; Zelig v. County of Los Angeles (2002) 27 Cal.4th 1112, 1126; City of Morgan Hill v. Bay Area Air Quality Management Dist. (2004) 118 Cal.App.4th 861, 869-870.)* What follows by way of background is necessarily imperfect because of the substantially incomprehensible complaint.

From what we can glean, Smith alleged he was harassed, threatened, conspired against and/or terrorized by El Dorado Superior Court clerk staff personnel and the police; documents were missing from a family court file; court personnel threw away documents he sent to the court by fax; and he was falsely arrested. The complaint does not allege when these events occurred, but a police report attached to the complaint indicates the alleged "throwing away" of some documents Smith faxed to the court occurred in 2001, and one of the alleged threats made by a deputy occurred in 2000. Named defendants are "Superior Court of El Dorado County Court Staff, El Dorado County sheriffs, Placerville Police, Officer Mike Scott, Jacki Davenport, Lyn Calvin, Pam Fisher, Pam Flietman, Sergeant Torkelson, Officer Harvey, Robin Parker, Allen P. Fields, Paul Hamlin and all[.]" (Some spelling and initial capitalization corrected.)<sup>1</sup>

Paul J. Hamill (erroneously sued as Paul Hamlin) filed a demurrer to the complaint, asserting Smith's complaint fails to

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<sup>1</sup> Originally filed in Amador County, the action was later transferred to El Dorado Superior Court.

comply with California pleading requirements, and that his purported claims are barred by the applicable statutes of limitations, fail to state a cause of action, and are uncertain, ambiguous and unintelligible. He also moved to strike Smith's claim for exemplary and punitive damages.

Smith filed no opposition to the demurrer and motion to strike.

The trial court sustained the demurrer with leave to amend within 10 days. It ruled that "[d]efendant Hamill, having not been named as the subject of any allegation in any cause of action in the complaint, has not been apprised of the nature, source and extent of the causes of action against him and, thus, cannot defend against the claims." Having sustained Hamill's demurrer, the court also granted his motion to strike.

When Smith failed to file an amended complaint, Hamill moved ex parte for a dismissal of the complaint in its entirety with prejudice.<sup>2</sup>

At the June 4, 2009, hearing on Hamill's request for a dismissal, Smith appeared and argued. Following argument, the court announced its tentative intention to dismiss the action without prejudice. Smith asked, "And what about the other defendants in this case?"

"THE COURT: Well, the matter is dismissed as to all defendants.

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<sup>2</sup> Nothing in the record suggests Smith ever requested an extension of time to file an amended complaint.

"MR. SMITH: All the defendants.

"THE COURT: The entire matter is dismissed. That was the motion that was made.

"MR. SMITH: Including the county?

"THE COURT: As to all defendants."

The written "Order on Defendant Paul J. Hamill['s] Ex Parte Application for an Order to Dismiss Action" subsequently signed by the court states: "After full consideration of the application, this Court finds that the interests of justice are served by dismissal of the action. [¶] THEREFORE, IT IS ORDERED THAT this action be dismissed with prejudice."

#### DISCUSSION<sup>3</sup>

Code of Civil Procedure section 581, subdivision (f)(2), provides that a trial court may dismiss a complaint if "after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal." Dismissal of an action under this section is reviewed for abuse of discretion and appellant has the burden of establishing such abuse. (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612.)

Where a demurrer is sustained with leave to amend and the complaint is not amended within the time allowed, "it is

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<sup>3</sup> As a threshold matter, we note for the benefit of the parties that a written order dismissing an action, signed by the court and filed in the action, constitutes an appealable judgment. (Code Civ. Proc., § 581d.)

presumed that the complaint states as strong a case as is possible [citation]; and the judgment of dismissal must be affirmed if the unamended complaint is objectionable on any ground raised by the demurrer.' [Citations.]" (*Soliz v. Williams* (1999) 74 Cal.App.4th 577, 585; *Gutkin v. University of Southern California* (2002) 101 Cal.App.4th 967, 981.) A demurrer is properly sustained if the complaint does not allege facts sufficient to constitute a cause of action under any legal theory or if the alleged facts are unintelligible. (Code Civ. Proc., § 430.10, subds. (e), (f); *Service by Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1811-1812; *Beresford Neighborhood Assn. v. City of San Mateo* (1989) 207 Cal.App.3d 1180, 1191.)

These rules of pleading and procedure apply equally to Smith, who is representing himself on appeal as he did below. A party representing himself is to be treated like any other party and is entitled to the same, but no greater, consideration than other litigants and attorneys. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247; *Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.)

Here, we agree the trial court could properly have sustained Hamill's demurrer either on the ground it fails to allege a cause of action (in that it alleges no specific allegations against Hamill) or because its allegations are ambiguous and unintelligible. By way of example of the latter, we quote below from a portion of the rambling, unpunctuated narrative that comprises the bulk of the complaint (Smith refers

to himself in the third person throughout): "Travis Smith tried to get a copy of the police report for theft of court paperwork Sgt. Scott told him there was no officer by the name and there was no report taken Travis Smith insisted on talking to chief Brown were making an appointment Sgt. Scott attacked him from behind took him to jail and charged him with a 148 a year and a half later they went to trial Travis Smith was found not guilty of the 148 he filed multiple claims in this matter but yet it was still dismissed for lack of claim the claims were attached to the complaint so where did they go everything that he filed was either dismissed or sent back they discriminated against him so much and so bad they almost made him a rambling fool nobody would listen to him or nobody cared." (*Sic.*) As the unamended complaint is objectionable on these grounds raised by the demurrer, it was properly dismissed upon Smith's failure to amend. (*Soliz v. Williams, supra*, 74 Cal.App.4th at p. 585.)

Nor has Smith sustained his appellant's burden on appeal of showing error by the trial court.

A judgment or order of the trial court is presumed to be correct, and all intendments and presumptions are indulged to support it on matters as to which the record is silent. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *In re Marriage of Gray* (2002) 103 Cal.App.4th 974, 977-978.) It is the appellant's burden to affirmatively demonstrate reversible error. (*Denham v. Superior Court, supra*, 2 Cal.3d at p. 566; *In re Marriage of Gray, supra*, 103 Cal.App.4th at p. 978.)

The appellant's burden includes: (1) presenting each point separately in the opening brief under an appropriate heading, showing the nature of the question to be presented and the point to be made; (2) providing an adequate record that affirmatively demonstrates error; (3) supporting all appellate arguments with legal analysis and appropriate citations to the material facts in the record; and (4) showing exactly how the error caused a miscarriage of justice. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1836, 1830-1831, fn. 4; *Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050.) If an appellant fails to comply with these rules, the contentions are forfeited. (*Badie v. Bank of America, supra*, 67 Cal.App.4th at pp. 784-785; *Opdyk v. California Horse Racing Bd., supra*, 34 Cal.App.4th at pp. 1830-1831, fn. 4; *Sprague v. Equifax, Inc., supra*, 166 Cal.App.3d at p. 1050.)

Smith's appellate brief fails to raise a legally cognizable claim of error. Moreover, it is as unintelligible as the complaint; we cannot discern what error he contends was made by the trial court in connection with the demurrer, and he makes no apparent effort to show how the complaint could be amended to solve defects identified by the trial court.

We agree with the court's evident conclusion that, even if Smith were given another chance, there is no reasonable possibility that he would file an intelligible complaint overcoming the issues raised on demurrer. The judgment

dismissing his complaint without leave to amend was properly entered.<sup>4</sup>

DISPOSITION

The judgment (dismissing the underlying complaint without leave to amend) is affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

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NICHOLSON, J.

We concur:

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BLEASE, Acting P. J.

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SIMS, J.

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<sup>4</sup> We decline defendants' request that we find Smith's appeal frivolous and impose sanctions. An appeal that is simply without merit is not by definition frivolous and should not incur sanctions. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) Although without merit, we do not find Smith's appeal frivolous.